

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OEC LOGISTICS, INC., Agent for Orient
Express Container (HK) Co. Ltd.,

Plaintiff,

ORDER REMANDING CASE
21-CV-4145 (JS) (ST)

-against-

KKN INTERNATIONAL LLC,

Defendant.

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APPEARANCES

For Plaintiff: Garth S. Wolfson, Esq.
Edward A. Keane, Esq.
Mahoney & Keane LLP
40 Worth Street, Tenth Floor
New York, New York 10013

For Defendant: Sanjay Chaubey, Esq.
Law Offices of Sanjay Chaubey
420 Lexington Avenue, Suite 2148
New York, New York 10710

SEYBERT, District Judge:

WHEREAS, this breach-of-contract action was filed by OEC Logistics, Inc. ("Plaintiff") against KKN International LLC ("Defendant") in the Supreme Court of the State of New York, County of Nassau, by Summons and Verified Complaint on April 7, 2021 (Summons & Compl., Ex. A, ECF No. 5-1, attached to Mot. Remand, ECF No. 5);

WHEREAS, Defendant filed an answer and counterclaims to the Verified Complaint on June 24, 2021 (Def. Answer & Counterclaims, Ex. B, ECF No. 5-2, attached to Mot. Remand);

WHEREAS, Plaintiff filed an answer to Defendant's counterclaims on July 23, 2021 (Pl. Answer to Counterclaims, Ex. C, ECF No. 5-3, attached to Mot. Remand);

WHEREAS, Plaintiff then filed the instant Notice of Removal on July 23, 2021, seeking to remove the case to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1441(a) (Not. Removal, ECF No. 1), and the case was assigned to the undersigned;

WHEREAS, Defendant filed a Motion to Remand the case to New York State Court (Mot. Remand; Reply, ECF No. 7), which Plaintiff opposed (Opp'n, ECF No. 6);

WHEREAS, it is well established that counterclaim defendants who are also the original plaintiff, like Plaintiff here, cannot remove a counterclaim filed against it pursuant to 28 U.S.C. § 1441(a), see Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 106-109 (1941); see also Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1748-50 (2019) (extending Shamrock Oil's holding to third-party counterclaim defendants), reh'g denied, 140 S. Ct. 17;

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Remand (ECF No. 5) is GRANTED, and this case is REMANDED to the Supreme Court of the State of New York, County of Nassau;

IT IS FURTHER ORDERED that the Clerk of the Court is respectfully directed to mark this case CLOSED;

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: October 20, 2021
Central Islip, New York